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PRACTICE LIMITED TO MATTERS BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

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June 29, 1996

Mr. William F. Caton, Secretary
The Federal Communications Commission
1919 M Street NW
Washington DC 20554

RE: MM Docket No. 96-95
RM - 8787
Plattsmouth, Nebraska

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JUL 1 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Dear Mr. Caton:

Transmitted herewith, on behalf of Platte Broadcasting, Inc., are an original and six copies of its Reply Comments in the above-captioned proceeding.

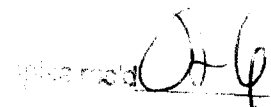
Should any questions arise with regard to this matter, please communicate with the undersigned, directly.

Respectfully submitted,



Richard J. Hayes, Jr.

Counsel to
Platte Broadcasting Company, Inc.



W. F. Caton

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

**Amendment of Section 73.202 (b)
Table of Allotments,
Plattsmouth, Nebraska**

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**MM Docket No. 96-95
RM - 8787**

To: Chief, Allocations Branch

REPLY COMMENTS OF PLATTE BROADCASTING, INC.

Comes now, Platte Broadcasting, Inc., ("Platte") the Petitioner in this proceeding and the licensee of KOTD-FM, Plattsmouth, Nebraska, through counsel, with Reply Comments in the above-captioned proceeding.

In a Notice of Proposed Rule Making and Order to Show Cause released by the Federal Communications Commission on April 25, 1996, the Commission proposed to amend the FM Table of Allotments (47 CFR 73.202(b)) to substitute Channel 295C3 for Channel 295A at Plattsmouth, Nebraska and also proposed to modify the license of KOTD-FM, Plattsmouth to specify operation on the higher-class channel. To accommodate this upgrade of facilities at Plattsmouth, the Commission further proposed to modify the license of station KJJC, Osceola, Iowa. *An Order to Show Cause* was directed to Lifestyle Communications Corporation ("LCC"), licensee of KJJC, by the Commission pursuant to the requested modification at Osceola, as to why its license should not be modified to specify operation on Channel 296C2 in lieu of Channel 295C2. The Notice of Proposed Rule Making

specified a deadline of June 17, 1996 for filing Comments and Counterproposals and a deadline of July 2, 1996 for submitting Reply Comments. Pursuant to Section 1.87 of the Commission's Rules, LCC was given until June 17, 1996 to *Show Cause* why its license should not be modified. The Notice of Proposed Rule Making further stated that "...if no written statement is filed by (June 17, 1996) (regarding the proposed modification of its license) LCC will be deemed to have consented to the modification as proposed in the *Order to Show Cause*"

Platte filed Formal Comments with respect to this proceeding prior to the June 17, 1996 deadline wherein it reiterated its intention to submit an application (FCC Form 301) for the upgraded facility should the FCC issue a Report and Order granting the requested upgrade and Platte, the Petitioner, further stated that it would promptly construct the authorized facilities. Platte's Reply Comments, submitted prior to July 2, 1996, are also filed in a timely manner.

LCC submitted a pleading styled as "Counterproposal and Opposition to Notice of Proposed Rule Making and Order to Show Cause" ("LCC Pleading") in this proceeding. LCC did not, however, file any written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. Instead, LCC solely relies on its Counterproposal which, if not adopted, would clearly indicate that LCC has no substantive objection to the proposed channel change at Osceola.

LCC'S COUNTERPROPOSAL

LCC does not want to change its licensed channel from 295C2 to 296C2 even though that channel change represents an absolute minimum of disruption, expense and effort. A change to the first adjacent channel would be reimbursed by Platte, as stated in Platte's Petition for Rule Making.

Platte's proposal, by way of review, seeks the following amendment to the Commission's Table of Allotments:

<u>COMMUNITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Plattsmouth, Nebraska	295A	295C3
Osceola, Iowa	295C2	296C2

However, to avoid having to change channels, LCC offers the following counterproposal:

<u>COMMUNITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Plattsmouth, Nebraska	295A	299A
Papillion, Nebraska		295A

LCC's Counterproposal requires KOTD-FM, licensed to Platte, to change channels in order to accommodate new service to the community of Papillion, a bedroom suburb of Omaha, Nebraska. In this proposal, LCC would not be required to change channels. KOTD would be required to move from Channel 295A to Channel 299A. Channel 295A would then be utilized in Papillion, a community already served by dozens of Class "C" facilities from the City of Omaha and surrounding areas.

It is interesting to note that LCC's entire pleading is devoted to the proposition that Papillion deserves a first, local service. LCC's stated desire, based upon the contents of its pleading, is that its Counterproposal provides for a more efficient use of the scarce FM resource. LCC argues that new service to Papillion is favored over an upgrade at Plattsmouth. Platte disagrees and believes that this Reply to LCC's Counterproposal will completely resolve the issue of new service at Papillion while providing KOTD-FM with an upgrade to C3 status and, at the same time, maintaining the status quo of FM facilities at Plattsmouth. Certainly LCC would agree with Platte that the objective of this proceeding should be to provide service to a community which presently has no "local" service while stretching the scarce FM allocation resources in the most efficient manner possible. It should be noted, furthermore, that Channel 299A cannot be utilized at Papillion, Nebraska because it does not afford city-grade coverage to the community of license. Obviously, if channel 299A could be utilized at Papillion, Platte would suggest that the conflict be resolved by allotting the channel to Papillion.

PLATTE’S REPLY COMMENTS AND PROPOSED RESOLUTION OF CONFLICT

Platte Broadcasting, Inc. herein proposes to change its City of License from Plattsmouth to Papillion thereby providing Papillion with its first local broadcast service. Platte would propose to serve Papillion on its present channel 295 but would further propose that channel 295 be upgraded to Class “C3” status at Papillion. As a class C3 facility, Papillion would be completely encompassed by a 70 dBu signal. The attached Engineering Statement provides a complete review of this proposal, together with the specification of reference co-ordinates used in the study. Additionally, Platte proposes that channel 299A be allotted to Plattsmouth. To accommodate this resolution, LCC’s facility at Osceola would be required to change channels from 295C2 to Channel 296C2, as originally proposed. It should also be noted that no new channels or communities are added to this proceeding by way of Platte’s proposed resolution.

Platte’s proposed resolution of this proceeding is as follows:

<u>COMMUNITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Papillion, Nebraska *		295C3
Plattsmouth, Nebraska	295A	299A
Osceola, Iowa	295C2	296C2

* The use of channel 295C3 is mutually exclusive with Platte’s licensed facility at Plattsmouth, Nebraska (KOTD-FM) on channel 295A and would be “protected” by Section 1.420 (g) and (i) of the Commission’s Rules. This proposal is a for both a change in city of license and for an upgrade in facilities.

PLATTE'S CHANGE IN CITY OF LICENSE

Platte seeks to invoke the provisions of Section 1.420 (g) and (i) of the Commission's Rules which permits the modification of a station authorization to specify a higher class channel and/or a new community of license without affording interested parties to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License, (Change of Community R&O)*. 4 FCC Rcd 4870 (1989), recon granted in part, ("Change of Community MO&O") 5 FCC Rcd 7094 (1990). In support of this proposal to resolve this conflict, Platte states that the reallotment to Papillion, which is not within an urbanized area, is mutually exclusive with its existing authorization at Plattsmouth. The distance between Plattsmouth and Papillion is minimal and the facility would also place a city-grade signal over the community of Plattsmouth. KOTD-AM is also licensed to Plattsmouth, Nebraska and, therefore, the community of Plattsmouth would not be denied a local outlet of expression as a result of this change in community of license. Furthermore, Plattsmouth would be provided with a new FM allocation under this proposal on channel 299A. Platte Broadcasting, Inc. hereby states that it will apply for the construction permit on channel 299A if it is allotted to Plattsmouth, Nebraska and, if awarded the facility, Platte will promptly construct the new station.

In further support of its proposal, Platte states that the adoption of its proposal would result in a preferential arrangement of allotments consistent with the *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992) as the reallotment would provide Papillion (population 10,372) with its first local aural transmission service, whereas Plattsmouth (population 6,412) would retain local aural transmission service from KOTD-AM as well as from the proposed allotment on channel 299A.

Additionally, Platte's proposal to change city of license to Papillion and to upgrade from class A status to class C3 status would result in a facility which would provide service to 618,873 persons according to 1990 US Census estimates. LCC's proposal for a class A facility would result in service to only 590, 507 persons, according to population estimates provided in LCC's pleading. Platte's proposal for an upgraded facility at KOTD-FM, when moved to Papillion, would result in a net gain of 28,366 persons. The allotment of new FM channel 299A at Plattsmouth would provide service to 460,728 persons. The final result is that Platte's proposal better satisfies the Commission's allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992). The change in city of license from Plattsmouth to Papillion provides Papillion with first local service (priority three) and the significant difference in population to be served by reallocation to Papillion and an upgrade to class C3 status better satisfies priority number four, "Other Public Interest Matters". Furthermore, since Platte's Reply Comments conform with the intent and the spirit of 47 CFR 1.420 (g) (i) regarding change in city of license and upgraded facilities, competing expressions of interest, such as LCC's Counterproposal, cannot be considered by the Commission since Platte's proposal for reallocation of channel 295 in Papillion is mutually exclusive with Platte's licensed use of channel 295 in Plattsmouth.

LCC'S COUNTERPROPOSAL IS *NOT* IN THE PUBLIC INTEREST

LCC stated in its pleading that it "opposes" Platte's proposal to change channels from 295C2 to 296C2. It offered no substantive reason for its opposition. To *block* Platte's proposal, LCC proposed an allotment scheme which would effectively prevent KOTD-FM, Platte's licensed station in Plattsmouth, from upgrading to class C3 status. LCC's own engineering study, submitted with its

pleading, clearly shows that a class C3 facility could be allotted to Papillion. Instead, LCC only proposed a Class A facility at Papillion because a class A facility at Papillion would not require LCC's station at Osceola, KJJC, to change channels. If LCC was as interested in truly efficient use of the limited FM spectrum, it would have proposed a maximum facility of class C3 status at Papillion. It did *not* and cannot *now* be heard to do so. LCC's proposal can only be viewed as self-serving. LCC goes to great lengths to demonstrate, under the Commission's fourth priority in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1992), that its counterproposal should be favored because its proposal offers service to more persons than Platte's proposal. LCC selectively and deliberately counterproposed a class A facility at Papillion in order to provide a cushion of spectrum protection for its station in Osceola. Its pledge to apply-for and construct a Papillion station notwithstanding, LCC's proposal can be viewed as nothing more than an obvious attempt to avoid the necessity of making a simple one channel change at Osceola; a change which would cost LCC nothing and would create no listener confusion in its community, at all. Its failure to propose a maximum facility at Papillion only serves to highlight the sham nature of its counterproposal.

CONCLUSION

The public interest would be served by resolving these conflicting proposals in favor of the proposal offered in these "Reply Comments" submitted by Platte Broadcasting, Inc., the original petitioner in this proceeding. The change in city of license from Plattsmouth to Papillion for station KOTD-FM would provide Papillion with a first local aural service and the change in city of license is consistent with 47 CFR 1.420 (g) and (i). Platte's proposal to change its city of license to channel

295C3 at Papillion is mutually exclusive with its use of channel 295 at Plattsmouth and, therefore, must prevail over competing expressions of interest. Platte's proposal also includes a request for a new FM facility on channel 299A at Plattsmouth. The proposal to add channel 299A at Plattsmouth is not essential to Platte's upgrade request and proposal to change city of license because Plattsmouth is already served by KOTD-AM and KOTD-FM's change in city of license will not deprive Plattsmouth of an outlet of expression. Platte, however, believes the allotment of channel 299A to Plattsmouth is in the public interest even though it represents additional, local business competition for Platte.

Platte's proposal to change its city of license and to upgrade from channel 295A to channel 295C3, together with its proposal to add channel 299A at Plattsmouth, will serve more persons than LCC's counterproposal. Platte's proposal offers the advantages of first, local service with a maximum, permissible facility at Papillion while offering new FM service to Plattsmouth. Platte's proposal is a genuine proposal to provide wide-area FM service to Papillion and new FM service to Plattsmouth. LCC's counterproposal is self-serving and is designed to add a minimum class "A" facility at Papillon instead of a maximum class C3 facility which can only be viewed as a blatant attempt to protect its Osceola station from having to change channels.

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Respectfully submitted,

Platte Broadcasting Company, Inc.

By:  _____

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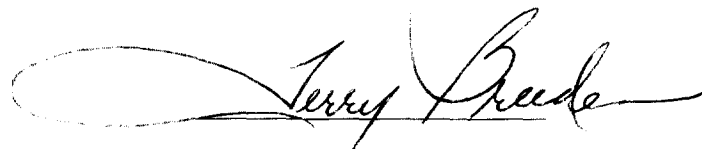
June 28, 1996

CERTIFICATE OF SERVICE

I, Terry Breeden, Secretary to Richard J. Hayes, Jr., hereby certify that the foregoing document was mailed this date by First-Class US Mail, postage prepaid, to the following:

Melodie A. Virtue, Attorney
Haley Bader and Potts
Attorneys at Law
4350 North Fairfax Drive - Suite 900
Arlington, Virginia 22203

Counsel to Lifestyle Communications Corp.

A handwritten signature in black ink, reading "Terry Breeden". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping underline.

Terry Breeden

June 29, 1996

RICHARD J. HAYES, JR.

ATTORNEY AT LAW

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